

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Spectrum Five LLC)	File Nos. SAT-LOI-20050312-00062
)	SAT-MOD-20101126-00245
)	Call Sign S2667
Petition for Declaratory Ruling to Extend or Waive)	File Nos. SAT-LOI-20050312-00063
Construction Milestone)	SAT-MOD-20101126-00269
)	Call Sign S2668

MEMORANDUM OPINION AND ORDER

Adopted: November 6, 2015

Released: November 6, 2015

By the Chief, International Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we deny the request of Spectrum Five LLC (Spectrum Five)¹ to reconsider our decision to invalidate the grant to Spectrum Five of U.S. market access for provision of Direct Broadcast Satellite (DBS) service in the United States using a Netherlands-authorized “tweener” satellite network at the 114.5° W.L. orbital location.² We find no merit in Spectrum Five’s claim that we should have granted a waiver or extension of the milestones that were conditions of this grant. Thus, we affirm our decision in the *Spectrum Five Cancellation Order* to invalidate Spectrum Five’s market access grant.

II. BACKGROUND

2. *Spectrum Five Market Access Grant.* On November 29, 2006, we granted Spectrum Five access to the U.S. market for two satellites authorized by the Netherlands.³ These satellites were to be located at the 114.5° W.L. orbital location. That location is between U.S.-licensed DBS satellites providing service to consumers from the 110° W.L. and 119° W.L. orbital locations. The *Market Access Grant* specified, as a condition of the grant, the following progress milestones: (1) complete contracting for the construction of the satellite system within one year of grant; (2) complete critical design review

¹ Spectrum Five LLC Petition for Reconsideration, IBFS File Nos. SAT-MOD-20101126-00245, SAT-MOD-20101126-00269 (dated Aug. 25, 2011) (Spectrum Five Petition).

² *Spectrum Five, LLC Petition for Declaratory Ruling to Extend or Waive Construction Milestone*, Memorandum Opinion and Order, 26 FCC Rcd 10448 (Int’l Bur. 2011) (*Spectrum Five Cancellation Order*). As we explained in more detail in the *Spectrum Five Cancellation Order*, a “tweener” location is one between orbital locations assigned in the relevant International Telecommunication Union (ITU) Plan, and at a reduced orbital spacing that is compatible with the current Plan provisions. See *id.* at 10449, ¶ 3.

³ *Petition for Declaratory Ruling to Serve the U.S. Market Using Broadcast Satellite Service (BSS) Spectrum from the 114.5° W.L. Orbital Location*, Order, 21 FCC Rcd 14023, ¶ 1 (Int’l Bur. 2006) (*Market Access Grant*); applications for review denied, Memorandum Opinion and Order, FCC 08-64, 23 FCC Rcd 3252 (2008) (*2008 Review Order*).

(CDR) within two years of grant; (3) complete construction of the first system satellite within four years of grant; and (4) have all satellites in the system operational within six years of grant.⁴ On November 28, 2007, Spectrum Five certified completion of the first milestone and filed a copy of its contract with Space Systems/Loral (SS/L) to construct two satellites. On November 25, 2008, Spectrum Five filed a letter from SS/L certifying that it had completed CDR for both satellites. Spectrum Five also filed annual reports in June 2009 and June 2010 informing the Commission that it was working with SS/L to meet the third milestone – completing construction of its first satellite. However, on November 26, 2010, Spectrum Five filed a request to extend or waive the construction milestone for its first satellite by two years, from November 29, 2010 to November 29, 2012.⁵ Then, in response to an inquiry from the Bureau's Satellite Division,⁶ Spectrum Five filed a letter on February 11, 2011, stating that it had ceased work under the contract with SS/L after it had filed the CDR milestone documentation.⁷

3. *Spectrum Five Cancellation Order.* On July 26, 2011, we denied Spectrum Five's request to extend or waive the construction milestone and declared Spectrum Five's 2006 market access grant null and void.⁸ We determined that none of Spectrum Five's stated reasons for its milestone extension request – regulatory uncertainty caused by the applications for review of Spectrum Five's market access grant, unique engineering challenges of building a twener satellite, the coordination issues related to its International Telecommunication Union (ITU) filing through the Netherlands, and the challenges of obtaining financing in the wake of the global financial crisis – justified an extension of the construction milestone.⁹ We found that Spectrum Five stopped all work on the satellites at least 30 months prior to our decision, and also failed to provide a plan for resuming or completing construction and launching of the satellites by the required November 2012 date.¹⁰ We determined that, in addition to not meeting the “begin construction” milestone, Spectrum Five had not met its earlier CDR milestone in November 2008, noting that the filed CDR documentation identifying components of its satellite was incomplete and that the CDR filing failed to include evidence of the large payment normally associated with a genuine CDR.¹¹ We also denied Spectrum Five's request to waive the construction milestone, citing lack of progress towards meeting the construction milestone or the remaining milestone requiring commencement of operations.¹² Finally, we concluded that Spectrum Five failed to comply with one of the conditions in the *Market Access Grant*, thereby providing another independent ground for voiding that grant in the *Spectrum Five Cancellation Order*.¹³ Specifically, because Spectrum Five had not coordinated with

⁴ *Market Access Grant*, 21 FCC Rcd at 14041, ¶ 40 (citing 47 C.F.R. § 25.148(b)). As a DBS licensee, Spectrum Five was not required to post a performance bond under Section 25.165. See 47 C.F.R. § 25.165(a).

⁵ Spectrum Five LLC Petition for Declaratory Ruling to Extend or to Waive the Interim Construction Milestone, IBFS File Nos. SAT-MOD-20101126-00245 and SAT-MOD-20101126-00269 (filed Nov. 26, 2010) (Milestone Extension Request); Letter from David Wilson, President, Spectrum Five LLC, to Marlene H. Dortch, Secretary, FCC (dated July 25, 2011) (supplementing the request to extend or waive the milestone).

⁶ See Letter from Robert G. Nelson, Chief, Satellite Division, International Bureau, FCC to David Wilson, President, Spectrum Five LLC (dated Jan. 13, 2011) (*January 13 Letter*).

⁷ Letter from David Wilson, President, Spectrum Five LLC, to Robert G. Nelson, Chief, Satellite Division, International Bureau, FCC at 2 (dated Feb. 11, 2011). That letter also included amendments to Spectrum Five's contract with SS/L and a copy of the CDR package produced by SS/L. *Id.*

⁸ *Spectrum Five Cancellation Order*, 26 FCC Rcd at 10448, ¶ 1.

⁹ *Id.* at 10451-10454, ¶¶ 8-19.

¹⁰ *Id.* at 10455, ¶ 21.

¹¹ *Id.* at 10455, ¶ 20.

¹² *Id.* at 10455, ¶ 22.

¹³ *Id.* at 10456, ¶ 25.

DIRECTV or EchoStar,¹⁴ we found that Spectrum Five failed to file a modification application within 30 days following completion of its CDR, as required in the event that it did not coordinate for power levels that exceeded the ITU interference limits.¹⁵

4. *Spectrum Five Petition for Reconsideration.* Spectrum Five filed its petition for reconsideration on August 25, 2011. On September 9, 2011, DIRECTV filed an opposition to Spectrum Five's Petition,¹⁶ and on September 20, 2011, Spectrum Five filed a reply to DIRECTV's opposition.¹⁷ There were no other commenters.

5. *ITU Filing.* Spectrum Five's market access grant was based on filings with the ITU submitted by the Netherlands. On May 14, 2013, the ITU cancelled these filings.¹⁸ As a result, for ITU coordination purposes, the Netherlands filings that were the basis for Spectrum Five's network no longer need to be taken into consideration by the other Administrations, including the United States.¹⁹

III. DISCUSSION

6. Spectrum Five identifies four main points on which it seeks reconsideration. First, it argues that the Bureau erred in finding that an extension of the construction milestone was not warranted due to difficulties Spectrum Five experienced in the international coordination process.²⁰ Spectrum Five attributes these difficulties to what it alleges were violations by the United States of Spectrum Five's and the Netherlands' rights under ITU regulations. Second, Spectrum Five argues that it was an error to determine that Spectrum Five had not completed the CDR milestone.²¹ Third, Spectrum Five claims it was an error to conclude that Spectrum Five failed to file a required modification application within 30 days of the CDR milestone date.²² Finally, Spectrum Five repeats its claim that it is uniquely situated, in light of the current freeze on the filing of DBS applications (DBS freeze),²³ to provide much needed competitive service to the DBS market and that the Bureau erred in concluding otherwise.²⁴

¹⁴ In its petition for market access, Spectrum Five had proposed to operate at power levels that could cause interference to other DBS satellites. As a result, the *Market Access Grant* required Spectrum Five to coordinate with DIRECTV and EchoStar and limited Spectrum Five's power levels to be within the ITU interference criteria until it completed such coordination. See *Spectrum Five Cancellation Order*, 26 FCC Rcd at 10456, ¶ 24 (citing *Market Access Grant*, 21 FCC Rcd at 14037, ¶ 30 and at 14042, ¶ 43(d)).

¹⁵ *Id.* at 10456, ¶ 24 (citing *Market Access Grant*, 21 FCC Rcd at 14042, ¶ 43(c) and *2008 Review Order*, 23 FCC Rcd at 3259, ¶ 19).

¹⁶ Opposition of DIRECTV Enterprises, LLC (filed Sept. 9, 2011) (DIRECTV Opposition).

¹⁷ Reply to DIRECTV Enterprises, LLC's Opposition (filed Sept. 20, 2011) (Spectrum Five Reply).

¹⁸ See International Telecommunication Union, Radiocommunication Bureau, BR IFIC No. 2744 (dated May 14, 2013).

¹⁹ *Id.* at note 2.

²⁰ Spectrum Five Petition at 11-14.

²¹ *Id.* at 14.

²² *Id.* at 20.

²³ *Id.* at 22 (citing *Direct Broadcast Satellite (DBS) Service Auction Nullified; Commission Sets Forth Refund Procedures for Auction No. 52 Winning Bidders and Adopts a Freeze on All New DBS Service Applications*, Public Notice, FCC 05-213, 20 FCC Rcd 20618, 20619 (2005)).

²⁴ *Id.* at 21-22. Spectrum Five also claims that invalidating its authorization creates a hardship on it due to the DBS freeze. *Id.* See also Milestone Extension Request at 15, n.37.

7. We disagree with Spectrum Five's assertions that we erred in the *Spectrum Five Cancellation Order*, and we affirm our decision in that *Order* to invalidate Spectrum Five's market access grant. We affirm our finding in the *Spectrum Five Cancellation Order* that Spectrum Five's decision to halt construction and, significantly, its failure to provide any evidence of a plan for completing satellite construction, shows a lack of due diligence.²⁵ Our decision to cancel Spectrum Five's market access grant is justified on this lack of due diligence finding alone.²⁶ In addition, as discussed further below, we are unpersuaded by Spectrum Five's arguments with respect to: (1) the impact of its difficulties in the international coordination process; (2) the CDR milestone; (3) the modification application; and (4) the DBS freeze.

8. *International Coordination Process.* As an initial matter, we address Spectrum Five's claim of error with respect to our consideration of the impact of the international coordination process on Spectrum Five's request for an extension or waiver. First, we disagree with Spectrum Five's contention that the involvement in the satellite coordination process of its sponsoring administration, the Netherlands, justifies a grant of a milestone extension. Spectrum Five characterizes that involvement as evidencing a "dispute" between the United States and the Netherlands "regarding the basic rights and obligations of the parties to the coordination, and ongoing operations of U.S.-licensed DBS satellites that fail to respect the international rights of the Netherlands and Spectrum Five"²⁷ While many satellite coordination matters are resolved by discussions between commercial operators, without detailed involvement by sponsoring administrations, the involvement of an administration or administrations is not so extraordinary as to justify departure from precedent declining to consider coordination difficulties as a basis for milestone extension. Spectrum Five's market access grant was subject to the outcome of the international coordination process, the success of which is not guaranteed, and Spectrum Five accepted the risk of the coordination process as part of its market access grant.²⁸

9. Moreover, Spectrum Five's contention that the Bureau failed to respect international rights related to its ITU filing is incorrect.²⁹ The substance of Spectrum Five's complaint is that we permitted two EchoStar satellites (EchoStar 11 and EchoStar 14)³⁰ to launch in order to replace existing satellites operating at the 110° W.L. and 119° W.L. locations and to begin operations subsequent to Spectrum Five's market access grant. It is Spectrum Five's view that such operations are forbidden under ITU regulations³¹ because two U.S. ITU filings related to those satellites were submitted after Spectrum Five's

²⁵ See *Spectrum Five Cancellation Order*, 26 FCC Rcd at 10453-54, 10455, ¶¶ 17, 21. Spectrum Five does not dispute this finding in its petition for reconsideration.

²⁶ See also DIRECTV Opposition at 1-2 (noting that Spectrum Five has ceased satellite construction and has provided no plans for completing construction by its milestone deadline).

²⁷ Spectrum Five Petition at 3.

²⁸ *Spectrum Five Cancellation Order*, 26 FCC Rcd at 10453, ¶ 15.

²⁹ Spectrum Five Petition at 5.

³⁰ See *Petition for Clarification of Condition in EchoStar 11 License*, Order, 23 FCC Rcd 12786 (Int'l Bur. 2008) (*EchoStar 11 Order*); *Dish Operating L.L.C., Modification of Authority to Operate at the 118.9° W.L. Orbital Location and Authority to Launch and Operate the EchoStar-14 Satellite*, Order and Authorization, 25 FCC Rcd 2311 (Int'l Bur. 2010) (*EchoStar 14 Order*).

³¹ For example, Spectrum Five relies on Article 3.2 of Appendix 30, which states that "Member States shall not . . . bring into use assignments to broadcasting-satellite service space stations . . . , except as provided for in the Radio Regulations and [in Appendix 30]." See Spectrum Five Petition at 4-7, n.13 (citing ITU Radio Regulations, Appx. 30, Art. 3.2). Spectrum Five also relies on Article 8.1 of the ITU Radio Regulations, which addresses the "recording [of] an assignment," (*i.e.*, entering the assignment into the ITU Region 2 BSS Plan) and results in the assignment as reflected in that filing being entitled to recognition by other Administrations. See *id.* at 4-5 (citing ITU Radio Regulations, Art. 8.1).

filings through the Netherlands, and the agreement of the Netherlands was required prior to U.S. operations. These two satellites, it argues, significantly increased the potential for interference into Spectrum Five's system, thereby hindering the "priority rights" of the Netherlands and Spectrum Five.³²

10. We do not dispute that the EchoStar 11 and 14 operations vary somewhat from the technical parameters of the U.S. assignments at the 110° W.L. and 119° W.L. orbital locations as already entered into the ITU Region 2 BSS Plan.³³ This is because the United States has not completed the ITU agreement-seeking process for filings requesting modifications of the ITU Region 2 Plan in order to reflect the variance.³⁴ However, the licenses for EchoStar 11 and 14 both included conditions that recognized the need to consider earlier filings at the ITU and to adjust operations if necessary in the event those earlier filings were brought into use.³⁵ By the terms of the EchoStar licenses, EchoStar would be required to adjust its operations if those satellites interfered with the later-commenced operations of a satellite whose operations are based on earlier ITU filings. Given these assurances, the commencement of EchoStar's satellite operations provided Spectrum Five with no reasonable basis upon which to delay or abandon its construction efforts or to miss any of its milestones.

11. In addition, Article 4.4 of the ITU Radio Regulations includes protection for such later-commenced *operations* and, thus, allows the initiation of EchoStar's satellite operations without undercutting the efforts of a would-be satellite provider that has made an earlier, higher priority ITU filing. More specifically, Article 4.4 recognizes that Administrations can assign frequencies to a station operating at variance from the ITU regulations, on the condition that the station neither cause interference to, nor claim interference protection from, stations *operating* in accordance with the ITU Constitution,

³² *Id.* at 7, 9-10. We have previously considered and rejected similar claims by Spectrum Five. *See EchoStar 11 Order*, 23 FCC Rcd at 12788-89, ¶ 8; *see also EchoStar 14 Order*, 25 FCC Rcd 2311. In the *EchoStar 14 Order*, we rejected Spectrum Five's request to require, as a condition of EchoStar 14's authorization, that EchoStar restrict its satellite operations to the power levels set forth in the existing ITU Region 2 BSS Plan until coordination was completed. *Id.* at 2313, ¶ 7, 2315-16, ¶¶ 10-11. We explained that when an applicant seeks an authorization and its technical parameters vary from the ITU Region 2 BSS Plan, the Commission grants authority subject to a condition set forth in Section 25.111(c) of the Commission's rules. *Id.* at 2314-15, ¶¶ 7-8. Specifically, under Section 25.111(c), such systems receive no guaranteed protection from interference until the authorization holders obtain the agreement of all affected Administrations and the frequency assignment becomes part of the ITU Region 2 BSS Plan. 47 C.F.R. § 25.111(c). We further stated that "[a]dopting Spectrum Five's proposed conditions would impose unnecessary constraints on EchoStar 14's operations" and that "coordination with other administrations is not a prerequisite to a grant of U.S. DBS space station licenses to U.S. operators, particularly for networks that are not yet operational." *Id.* at 2316, ¶ 11. We concluded that Spectrum Five was not yet operational and, thus, there was no "... imminent commencement of operations by an 'affected network' under the ITU Radio Regulations." *Id.* at 2315, ¶ 10.

³³ ITU Region 2 includes North, Central and South America and Greenland. *See* Article 5, Section I of the ITU Radio Regulations. The ITU Region 2 BSS Plan consists of the Plan for BSS in the 12.2-12.7 GHz band (as provided in Appendix 30 of the ITU Radio Regulations) and the associated Plan for feeder links in the 17.3-17.8 GHz band (as provided in Appendix 30A of the ITU Radio Regulations).

³⁴ *See generally* ITU Radio Regulations, Appx. 30, Art. 3 & 4. The two EchoStar filings that Spectrum Five identifies have not yet been recorded with the ITU.

³⁵ *EchoStar 11 Order*, 23 FCC Rcd at 12788-89, ¶ 8; *EchoStar 14 Order*, 25 FCC Rcd at 2317, ¶ 15d. In addition, certain Part 25 rules specifically refer to and include portions of the ITU Radio Regulation provisions for the purpose of analyzing and authorizing those DBS satellite applications with technical characteristics that vary from the technical parameters of the ITU Region 2 BSS Band Plan. *See Market Access Grant*, 21 FCC Rcd at 14027, ¶ 6. Notably, Section 25.148(f) provides that "[o]peration of systems using differing technical characteristics may be permitted, with adequate technical showing, and if a request has been made to the ITU to modify the appropriate Plans to include the system's technical parameters." 47 C.F.R. § 25.148(f). *See also* 47 C.F.R. § 25.111(c).

Convention, and Regulations.³⁶ We, therefore, disagree with Spectrum Five's contention that EchoStar satellites' operations were not allowed under Article 4.4.³⁷ It is well settled that issuing a national authorization to operate a satellite network under Article 4.4 is a prerogative of Administrations.³⁸ Moreover, Spectrum Five made no allegation, pursuant to Article 4.4, that the operations of these satellites have caused harmful interference to any operating station. There is no requirement, under Article 4.4, to obtain the consent of the Netherlands on behalf of Spectrum Five prior to the operation of these satellites. Thus, Spectrum Five has neither cause to complain about the initiation of EchoStar's satellite operations nor a legitimate reason to cite such operations as grounds for missing its own milestones.

12. *CDR Milestone.* Spectrum Five argues that the Bureau erred in determining that Spectrum Five had not completed the CDR milestone.³⁹ Spectrum Five claims that the CDR package⁴⁰ was complete and that the lack of large payment was not evidence of Spectrum Five's inability to complete CDR.⁴¹ We are not persuaded by Spectrum Five's claims. We recognize, as Spectrum Five points out, that including heritage components in its CDR package helps to achieve an efficient, cost effective and reliable satellite design.⁴² However, typical CDR packages that satisfy the CDR milestone contain far more detailed satellite design information and analysis, thereby clearly demonstrating that the design phase is over and the manufacturing phase is ready to begin. In addition, typical payments at the completion of CDR are 25-50 percent of the contract price, a far higher percentage than paid by Spectrum Five.⁴³ Improvements in satellite procurements may reduce the overall costs, but, in our experience,

³⁶ ITU Radio Regulations, Art. 4.4 (emphasis added).

³⁷ See Spectrum Five Petition at 5-6.

³⁸ See Letter from David Wilson, President, Spectrum Five to Marlene H. Dortch, Secretary, Federal Communications Commission (dated July 25, 2011) at Attach. A, Telefax from the ITU Radiocommunication Bureau, SSD, to Radiocommunications Agency Netherlands, at ¶ 1 (dated Nov. 24, 2010). Furthermore, under Spectrum Five's interpretation of ITU provisions, an established operator in the process of deploying replacement satellites could be forced to limit service to consumers based on the fact that it had not completed the agreement seeking process with a satellite network that had little or no prospect for being brought into use. We decline to take this approach.

³⁹ Spectrum Five Petition at 14. Spectrum Five argues that this is the first time that the Bureau has invalidated an authorization for failure to satisfy the CDR milestone. *Id.* However, Spectrum Five acknowledges that, on the same day we declared Spectrum Five's authorization null and void, we also declared EchoStar's authorization to operate a "tweener" satellite null and void, based, in part, on its failure to satisfy the CDR milestone. See Spectrum Five Petition at 14, n.37 (citing EchoStar Corporation, Certifications of Milestone Compliance and EchoStar Corporation, Application to Authorize Operations of the EchoStar 8 Satellite at the 86.5° W.L. Orbital Location, *Memorandum Opinion and Order*, DA 11-1251, 26 FCC Rcd 10442, 10444, ¶ 7). Thus, we find this argument provides little weight for Spectrum Five's case, given that we made a similar finding on the same day for EchoStar, and given the other findings we make in this Order.

⁴⁰ The CDR package consists of the documentation detailing the design for each satellite subsystem along with the computer simulation and lab test results relied on for determining whether the proposed design fulfills specific performance parameters. Comprehensive Review of Licensing and Operating Rules for Satellite Services, *Report and Order*, 28 FCC Rcd 12403, 12421, ¶ 49 n.108 (2013) (*2013 Part 25 Reform Order*).

⁴¹ Spectrum Five Petition at 15 (citing *Spectrum Five Cancellation Order*, 26 FCC Rcd at 10455, ¶ 20, n.54) and 17.

⁴² *Id.* at 18.

⁴³ See *Spectrum Five Cancellation Order*, 26 FCC Rcd at 10455, ¶ 20 (stating that "[i]n fact, Spectrum Five's total payments as of November 2008 amounted to less than 10% of what was due by the CDR milestone and was only a fraction of one percent of the contract price.").

payments would still need to be large at CDR. Significantly, Spectrum Five fails to take this opportunity to produce the CDR package documentation or the large payment that we found was lacking in the *Spectrum Five Cancellation Order*. Accordingly, we conclude, as we did in the *Spectrum Five Cancellation Order*, that Spectrum Five failed to satisfy the CDR milestone.

13. We are also not persuaded by Spectrum Five claims that the legal definition for CDR⁴⁴ is vague and that the CDR evidentiary standard consists only of examples of, and not clear guidance for, what information is needed to satisfy the CDR milestone.⁴⁵ Typically, the CDR milestone evidence that we have received has been satisfactory based on the CDR definition and the CDR evidentiary guidance.⁴⁶ In addition, in the *2013 Part 25 Reform Order*, the Commission determined that relying on the CDR definition and CDR evidentiary examples set forth in prior Orders and Public Notices provided sufficient guidance for applicants seeking to demonstrate compliance with the CDR milestone.⁴⁷ Thus, we disagree with Spectrum Five that we erred in applying the standard for compliance with the CDR milestone.

14. *Modification Application.* Spectrum Five claims that the Bureau erred in concluding that it failed to file a modification application pursuant to a condition adopted in the *Market Access Grant*.⁴⁸ We affirm our findings with respect to that condition.⁴⁹ The condition in the *Market Access Grant* required Spectrum Five to provide, within 30 days of completing CDR, all technical characteristics of its satellites that were modified as a result of the coordination process.⁵⁰ In the *2008 Review Order*, the Commission clarified the condition by stating that, absent actual coordination, Spectrum Five should submit a modification application demonstrating that it had made the technical changes required for its satellites to operate without exceeding the ITU trigger for coordination.⁵¹ Spectrum Five argues that it was not required to coordinate, or even decide to coordinate within a particular time frame and that, as a result, filing a modification application within that time frame would have been premature.⁵² We disagree. Filing a modification application showing that, absent coordination for higher power levels, Spectrum Five's satellites would not exceed the ITU coordination trigger would have given the Bureau an opportunity to review any interference concerns resulting from the satellites' modified technical characteristics prior to completing construction and operation of the satellites.⁵³ In addition, if Spectrum Five had subsequently completed coordination, it could have filed another modification application reflecting the technical changes made as a result of that coordination.

⁴⁴ Spectrum Five Petition at 18. As Spectrum Five notes, CDR is defined as “the stage in the spacecraft implementation process at which the design and development phase ends and the manufacturing phase starts.” *Id.*, n.48 (citing *Space Station Reform Order*, 18 FCC Rcd at 10833, ¶ 191 (citing The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band, *Report and Order*, 15 FCC Rcd 16127, at 16178, ¶ 108 (2000))).

⁴⁵ *Id.* at 19.

⁴⁶ The International Bureau Provides Guidance Concerning the Critical Design Review Milestone Requirement, *Public Notice*, DA 04-787, 19 FCC Rcd 5362 (2004).

⁴⁷ *2013 Part 25 Reform Order*, 28 FCC Rcd at 12421, ¶ 48.

⁴⁸ Spectrum Five Petition at 20. Spectrum Five argues that it was not obligated to complete coordination within a specified time period or to even coordinate at all.

⁴⁹ See *Spectrum Five Cancellation Order*, 26 FCC Rcd at 10456, ¶¶ 24-25.

⁵⁰ See *Market Access Grant*, 21 FCC Rcd at 14042, ¶ 43c.

⁵¹ See *2008 Review Order*, 23 FCC Rcd at 3259, ¶ 19.

⁵² Spectrum Five Petition at 21.

⁵³ See *2008 Review Order*, 23 FCC Rcd at 3259, ¶ 19.

15. *DBS Freeze*. We also affirm the *Spectrum Five Cancellation Order*'s rationale and findings that the DBS freeze does not warrant a grant of Spectrum Five's request for an extension or waiver of the construction milestone due to its inability to file a new application for DBS service.⁵⁴ In determining that the DBS application freeze did not justify an extension in that *Order*, we noted Spectrum Five's failure to provide a specific plan for, or evidence of progress on, building its satellites.⁵⁵ We concluded that Spectrum Five failed to persuade us that it would provide service any sooner than any other entity once we lifted the DBS freeze.⁵⁶ Likewise here, even after requesting that we reconsider our decision in the *Spectrum Five Cancellation Order*, Spectrum Five provides no plans for completing construction of its satellite system.⁵⁷ Thus, we are not persuaded that any alleged public interest benefit to the DBS competitive market will result from granting an extension or waiver of the construction milestone and reinstating Spectrum Five's market access grant.⁵⁸

IV. CONCLUSION

16. Spectrum Five has provided no basis for reconsidering the Bureau's decision to declare Spectrum Five's market access grant null and void for failure to comply with its milestone schedule. Further, the events since the time Spectrum Five filed its petition reinforce our findings supporting that decision.

V. ORDERING CLAUSES

17. IT IS ORDERED that the Petition for Reconsideration filed August 25, 2011 by Spectrum Five LLC and associated with Call Signs S2667 and S2668 IS DENIED.

18. This Memorandum Opinion and Order is issued pursuant to Sections 0.261 and 1.106 of the Commission's rules, 47 C.F.R. §§ 0.261, 1.106, and is effective on release.

FEDERAL COMMUNICATIONS COMMISSION

Mindel De La Torre
Chief, International Bureau

⁵⁴ *Spectrum Five Cancellation Order*, 26 FCC Rcd at 10453-54, ¶¶ 16-17.

⁵⁵ *Id.* at 10453-54, ¶ 17. We also determined that Spectrum Five failed to provide any evidence that it was closer to providing service to customers than in 2006, when it received its market access grant. *Id.* at 10454, ¶ 17.

⁵⁶ *Id.* at 10454, ¶ 17.

⁵⁷ Moreover, as discussed above, the ITU has cancelled Spectrum Five's ITU filings, which were a prerequisite for its market access grant in this case. *See supra*, ¶ 5.

⁵⁸ *See* Spectrum Five Petition at 22-23.